

§ 531.57

of countermen, takes a turn as a short order cook for the group. Such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips.

§ 531.57 Receiving the minimum amount “customarily and regularly.”

The employee must receive more than \$20 a month in tips “customarily and regularly” in the occupation in which he is engaged in order to qualify as a tipped employee under section 3(t). If it is known that he always receives more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of section 3(m) may be applied. On the other hand, an employee who only occasionally or sporadically receives tips totaling more than \$20 a month, such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase “customarily and regularly” signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which he normally and recurrently receives more than \$20 a month in tips, he will be considered a tipped employee even though occasionally because of sickness, vacation, seasonal fluctuations or the like, he fails to receive more than \$20 in tips in a particular month.

§ 531.58 Initial and terminal months.

An exception to the requirement that an employee, whether full-time, part-time, permanent or temporary, will qualify as a tipped employee only if he customarily and regularly receives more than \$20 a month in tips is made in the case of initial and terminal months of employment. In such months the purpose of the provision for tipped employees would seem fulfilled if qualification as a tipped employee is based on his receipt of tips in the particular week or weeks of such month at a rate in excess of \$20 a month, where the employee has worked less than a

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month because he started or terminated employment during the month.

§ 531.59 The tip wage credit.

In determining compliance with the wage payment requirements of the Act, under the provisions of section 3(m) the amount paid to a tipped employee by an employer is deemed to be increased on account of tips by an amount which cannot exceed 50 percent of the minimum wage applicable to such employee in the workweek for which the wage payment is made. This credit is in addition to any credit for board, lodging, or other facilities which may be allowable under section 3(m). The credit allowed on account of tips may be less than 50 percent of the applicable minimum wage; it cannot be more. The actual amount is left by the statute to determination by the employer on the basis of his information concerning the tipping practices and receipts in his establishment. However, section 3(m) provides that an employee who can show to the satisfaction of the Secretary of Labor that the actual amount of tips received by him was less than the amount determined by the employer as a tip credit shall receive an appropriate wage adjustment. See § 531.50(a). As stated in Senate Report No. 1487 (89th Cong. 2d sess.), it is presumed that in the application of this special provision the employee will be receiving at least the maximum tip credit in actual tips: “If the employee is receiving less than the amount credited, the employer is required to pay the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips.” Provision is made in § 531.7 for employee requests for review of tip credit determinations made by employers, in the event that the employee considers that the tip credit taken exceeds his actual tips. As indicated in § 531.51, the tip credit may be taken only for hours worked by the employee in an occupation in which he qualifies as a “tipped employee.” Under employment agreements requiring tips to be turned over or credited to the employer to be treated by him as part of his gross receipts, it is clear from the legislative history that the employer